

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**BETTY R. KYLES**

Claimant

VS.

**HALLMARK CARDS, INC.**

Respondent

Self-Insured

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Docket No. 210,553

**ORDER**

Respondent requested Appeals Board (Board) review of the Award entered by Administrative Law Judge Brad E. Avery dated June 14, 2002.

**ISSUES**

In its request for review and its brief to the Board respondent states the issues as follows:

- (1) Whether the Administrative Law Judge [ALJ] erred as a matter of law by issuing an award prior to the terminal date of the Respondent.
- (2) Whether the Administrative Law Judge erred as a matter of law by failing to base the Award on the consideration of the whole record pursuant to K.S.A. 44-501, including but not limited to considering the deposition of Shirley Gerner taken on behalf of the respondent taken on June 5, 2002.
- (3) Whether the Administrative Law Judge erred as a matter of law by failing to rule upon the respondent's motion for extending terminal dates filed on June 14, 2002.

- (4) If the Board determines the Administrative Law Judge did not grant the order extending terminal dates to May 15, 2002 for the claimant and June 15, 2002 for the respondent, whether the Administrative Law Judge erred as a matter of law by considering the deposition of Lynn Ketchum, M.D., which occurred on May 15, 2002, which is outside the terminal date of May 8, 2002.
- (5) The amount of temporary total compensation paid.
- (6) Whether the claimant is entitled to interest under K.S.A. 44-512b.<sup>1</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant admits “. . . that the ALJ did not consider the deposition testimony of Shirley Gerner taken by respondent on 6/5/02 - within the terminal date of 6/15/02 agreed upon by the parties and which was further set forth in claimant's submission letter filed 5/16/02. Claimant is in agreement that the deposition of Shirley Gerner is part of the evidentiary record and should be considered along with the other evidence listed in claimant's submission letter.”<sup>2</sup> Claimant, however, objects to respondent's Motion Extending Terminal Dates beyond June 15, 2002. Furthermore, claimant states that she is agreeable to respondent's request for a remand to the ALJ for a determination of the issues based upon the entire record.

Although the parties are in agreement that respondent's terminal date was extended to June 15, 2002, the administrative file does not contain an Order signed by the ALJ evidencing same. Furthermore, there is no Order concerning respondent's June 14, 2002 Motion Requesting an Extension of its Terminal Date to July 15, 2002.

There is uncertainty concerning the record. It appears the Award was entered by the ALJ before the expiration of respondent's terminal date. If so, then that Award fails to consider evidence which the parties agree was a part of the evidentiary record. In addition, there was pending before the ALJ a Motion to Extend Terminal Dates at the time the Award was entered. Accordingly, the Board concludes that a remand is appropriate in

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<sup>1</sup> Respondent's Brief to Board (filed July 23, 2002) and Respondent's Request for Board Review (filed June 20, 2002).

<sup>2</sup> Claimant's Response to Respondent's Brief to Board (filed August 21, 2002).

order to give the ALJ an opportunity to address respondent's Motion and to decide the matter based upon the entire record.<sup>3</sup>

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this matter should be and is hereby remanded to the Administrative Law Judge for reconsideration and a decision based upon the entire record.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Jurcyk, Attorney for Respondent  
John J. Bryan, Attorney for Claimant  
Brad E. Avery, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>3</sup> See K.S.A. 44-523 and K.A.R. 51-3-8(d).

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